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Second report of the Secretary-General pursuant to paragraph 14 of resolution 1284 (1999)

I. Introduction

1. The present report is submitted pursuant to paragraph 14 of Security Council resolution 1284 (1999), in which the Council requested me to report every six months on the return of all Kuwaiti property, including archives seized by Iraq, as well as to appoint a high-level coordinator for this matter.

2. I submitted the first report pursuant to paragraph 14 of resolution 1284 (1999) on 19 April 2000 (S/2000/347 and Corr.1). It dealt with compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third country nationals or their remains. Paragraph 2 of the first report referred to the appointment of Ambassador Yuli Vorontsov of the Russian Federation as the high-level Coordinator. The events and documents referred to in paragraphs 3, 4, 5 and 8 of the report are relevant to the question of the return of property.

II. Background

3. The issue of Kuwaiti property was addressed by the Security Council in the aftermath of the Gulf war. In a letter dated 19 March 1991 (S/22361), the President of the Security Council informed the Secretary-General that the members of the Security Council were of the view that the modalities for the return of property from Iraq should be arranged through the Office of the Secretary-General, in consultation with the parties, and that the procedure also had the agreement of Iraq and Kuwait. To that end, the Secretary-General appointed a Coordinator, whose role was to receive, register and submit to Iraq claims presented by Kuwait and to facilitate the return of property which Iraq had declared that it had in its possession and was subsequently ready to return.*

4. In the report of the Secretary-General dated 2 March 1994 (S/1994/243), the Security Council was informed of the arrangements that had been made to carry out the task of the return of property. The report described the role of the Coordinator and referred to records, procedures and other elements of the hand-over operations. It was noted that the Coordinator was assisted by a small group of United Nations staff members, including one who acted as his representative in the field and facilitated the hand-over operations in Iraq and Kuwait. The Coordinator and his staff in the field had enjoyed the goodwill and cooperation of both Iraq and Kuwait. The hand-over operations, which were financed from the escrow account established under provisions of Security Council resolutions 706 (1991) and 778 (1992), were carried out without major complications, although some were time-consuming and presented considerable logistical problems.

5. The above-mentioned report contained a description of items handed over by Iraq to Kuwait. A subsequent report (S/1994/243/Add.1) listed property which the Government of Kuwait claimed had not been returned or which had not been returned intact.

* Mr. J. Richard Foran, Assistant Secretary-General, Office of General Services, Department of Administration and Management, performed these functions between 1991 and 1994. Mr. Raymond Sommereyns, Director, West Asia Division, Department of Political Affairs and, subsequently, Director, Library and Publications Division, Department of Information, served in this capacity from 1994 until the appointment of Ambassador Vorontsov.

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6. In his letter dated 27 September 1994 (S/1994/1099), the Permanent Representative of Iraq to the United Nations noted that, upon the completion of the hand-over of a C-130 aircraft, Iraq would have returned "all the Kuwait property in its possession, having nothing else whatever to return". He added that Iraq would "therefore have fulfilled all its obligations under paragraph 2 (d) of resolution 686 (1991) and paragraph 15 of resolution 687 (1991)". However, on 3 October 1994, the Permanent Representative of Kuwait to the United Nations presented "an indicative but far from exhaustive list of the Kuwaiti property that has yet to be returned" (S/1994/1126).

7. In the report of the Secretary-General dated 16 December 1996 (S/1996/1042), it was noted that the Government of Kuwait continued to attach importance to the return of archives belonging to the various government offices. Kuwait was still seeking the return of private and military property. Annexed to the report was a list of the property returned subsequent to the issuance of document S/1994/243, including property returned after Iraq's 1994 declaration that it had no more property to return.

8. The Security Council was briefed by the Secretariat on 5 November 1997 and announced that, in view of lack of expectations of the imminent return of additional property, the field office of the Coordinator had been closed in February 1997. The originals of the hand-over documents are kept in the Department of Political Affairs.

9. It should be noted that, on 3 June 1997 and on 7 December 1998, the Permanent Representative of Iraq reported that Iraqi authorities had found in local markets several small items (namely, a green leather bag, a revolver, a hunting rifle and several different sized dishes with decoration) that contained markings identifying them as belonging to Kuwait. Although Iraq was ready to return these items to Kuwait, hand-over operations could not be arranged owing to the absence of the representative of the Coordinator in the field.

III. Activities with regard to property issues

10. As mentioned in my report of 19 April 2000 (S/2000/347), I discussed with Ambassador Vorontsov his mandate and programme of work at the initial stage of his activities. Among other things, I requested him to make an inventory of the previous efforts regarding the return of the Kuwaiti property and archives. I recommended that the high-level Coordinator be guided by the conclusions of the panel established under the Chairmanship of Ambassador Celso L. N. Amorim of Brazil and that he establish working contacts with the parties concerned.

11. Since his appointment, Ambassador Vorontsov has conducted consultations with Sheikh Sabah Al-Ahmed Al Sabah, Deputy Prime Minister and Minister for Foreign Affairs, and with Sheikh Salem Sabah Al-Salem Al Sabah, Deputy Prime Minister and Minister for Defence of Kuwait. He has discussed the issue of Kuwaiti property with Mr. Igor Ivanov, the Foreign Minister of the Russian Federation, the members of the Security Council, the Permanent Representative of Kuwait to the United Nations, and the leadership of the League of Arab States and the Organization of the Islamic Conference, as well as other parties concerned. He has noted, in particular, the attention paid to this issue by the Movement of Non-Aligned Countries and the relevant provisions of the final document adopted by the Cartagena XIII Ministerial Conference of the Non-Aligned Countries. Ambassador Amorim and Ambassador Prakash Shah have also shared their experience with the Coordinator.

12. It will be recalled that in December 1998 Ambassador Prakash Shah, in the context of the comprehensive review, raised the matter of missing Kuwaiti property with Iraqi officials in Baghdad. Referring specifically to the question of missing archives, Mr. Tariq Aziz, Deputy Prime Minister of Iraq, responded that the property issue was not a major one and that, in his view, it could be easily settled in that context.

13. During my recent meeting on 13 April 2000 in Havana, with Mr. Mohammed Said Al-Sahaf, Minister for Foreign Affairs of Iraq, I urged Iraq, among other things, to cooperate on the return of Kuwaiti property and archives. My Iraqi interlocutors reconfirmed their Government's position that this issue should be addressed under Security Council resolution 687 (1991).

14. On 17 May 2000, the Coordinator received a letter from the Permanent Mission of the State of Kuwait to the United Nations, which advised him of the type and volume of the archives that belonged to the Ministry of Foreign Affairs. The Ministry

maintained large archives before the Iraqi invasion. These archives included categorized files containing tens of thousands of communications, among them confidential and regular documents, including agreements concluded between the State of Kuwait and foreign countries, stored in special rooms. In addition to the archives of the Ministry of Foreign Affairs, the Offices of the Amiri Diwan, the Prime Minister and different government institutions kept their own archives. The letter noted that, during the occupation of Kuwait, the archives had been loaded onto Iraqi army trucks and carried to Iraq.

15. As for the weapons that have not been yet returned, Kuwait maintains its claim that Iraq is in possession of military equipment seized from Kuwait. For example, while Iraq had 30 M-113 armoured personnel carriers in 1990 and 173 pieces were taken from Kuwait, Iraq currently has 80 pieces of this equipment. The corresponding figures for BMP-2 infantry fighting vehicles are: 35-40; 245; 200. For M-901 TOW vehicles, they are: none; 56; 40. For Hawk and SAM batteries: none; 5; 1. For Mercedes heavy equipment transporters: none; 86; 86. For Sky Guard air defence brigades: none; 5; 5. These items are referred to in documents S/1994/243/Add.1, S/1994/1126 and S/1996/1042 and, most recently, in a letter received by the Coordinator from the Permanent Representative of Kuwait to the United Nations. In that letter, dated 30 May 2000, the Permanent Representative requested Ambassador Vorontsov's assistance "in demanding Iraq to return the military equipment in compliance with the relevant Security Council resolutions" (see annex).

16. Bearing in mind the references to the United Nations Compensation Commission (contained in the Amorim panel's report, Ambassador Vorontsov has recently established contact with the Commission. He is aware that the Panel of Commissioners had reached a preliminary conclusion that there was nothing that the Commission could do for claimants seeking monetary compensation for loss of irreplaceable objects taken by Iraq, since the Commission had been established for purposes of awarding monetary compensation for losses and had no mechanism for requiring or enforcing specific performance.

IV. Observations

17. Having familiarized himself with the available documentation, and on the basis of information provided by his contacts, the high-level Coordinator has come to the following conclusions:

(a) Iraq has returned a substantial quantity of property over a nine-year period of time, with the bulk of the hand-overs occurring between 1991 and 1994. Despite this fact, there remain many items which Iraq is under obligation to return to Kuwait;

(b) It may never be possible to reach a point at which there will be 100 per cent certainty that all items in Iraq's possession have been returned, and thus allowing for a determination that the return has been completed. However, the continuing absence of a credible explanation from Iraq with regard to the missing property, especially archives, military *matériel* and museum items, delays the closure of the property issue;

(c) Kuwait considers essential the return of archives and military equipment, as well as the items from the Islamic and National museums of Kuwait. The Coordinator joins the Amorim panel in encouraging the Government of Iraq to make additional efforts to find Kuwaiti property on its territory and to continue making such property available for return through the Secretariat. Progress could also be achieved by periodic reports by the parties to the high-level Coordinator, who would maintain an updated list of items yet to be returned;

(d) The Coordinator hopes to have a meaningful discussion with members of the appropriate panels of the United Nations Compensation Commission on the issue of Kuwaiti property during his forthcoming visit to Geneva.

18. Ambassador Vorontsov stands ready to travel to Baghdad at the earliest opportunity in order to facilitate the return to Kuwait of items mentioned in paragraph 9 above which, he understands, are available for immediate hand-over. He is also prepared to seek clarification from the Iraqi authorities regarding their position and intentions referred to in paragraphs 12 and 13 above.

19. At present there is no active mechanism in the field similar to the one established in 1992 to enable the return of property. To that end, in order to minimize

costs I would consider asking the Commander of UNIKOM to assign an existing international staff member to help to facilitate the return of property, as in the past.

20. In conclusion, I would like to reiterate that, while the Coordinator's mandate emanates from the provisions of Council resolution 1284 (1999), understanding and goodwill are of critical importance for the success of his mission, which is aimed at facilitating the closure of an issue that has been pending since the end of the Gulf war. I agree with the Coordinator's conclusion that, at least at the initial stage of his efforts, priority should be given to the return by Iraq of the Kuwaiti archives, military equipment and museum items, and I fully support his efforts in that regard.

Annex

List of military equipment not yet returned to Kuwait by Iraq

Item number	*Items/description*	*Quantity*
1	F1 Mirage fighter planes	8
2	BMP personnel carriers	245
3	M1 13 personnel carriers	90
4	Hawk missile battery	1
5	SAM 7 missiles	463
6	SAM 8 missiles	206
7	SAM 8 batteries	5
8	Amon anti-aircraft batteries	5
9	Mercedes tank carriers	86
10	M-901 missile carriers	56
11	TOW anti-tank missiles (developed)	1 950
12	TOW anti-tank missiles (regular)	1 800
13	Russian LUNA FROG missile launching pads	12
14	LUNA FROG missiles	120
15	M84 tanks	6